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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WILLIAM B. WERNER

Appeal 2008-4837
Application 09/731,415
Technology Center 2400

Decided: January 23, 2009

Before KENNETH W. HAIRSTON, JOSEPH F. RUGGIERO, and KARL
D. EASTHOM, *Administrative Patent Judges*.

RUGGIERO, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134 from the Final Rejection of claims 1-4, 6-13, and 15-19. Claims 5, 14, and 20 have been canceled. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Appellant's invention relates to the scheduling and controlling of the presentation of data in which a plurality of data presentation units operate to present a plurality of features which are stored in a data library. A server, which is coupled to the data library, operates to select features to present at selected times. The server also determines restrictions applicable to the selected features including data presentation unit attributes which are used to present the selected features. (Spec. 3:6-22).

Claim 1 is illustrative of the invention and reads as follows:

1. A system for scheduling and controlling presentation of data, comprising:

- a data library operable to store a plurality of features and promotional data;

- a plurality of data presentation units coupled to the data library, each disposed at a corresponding one of a plurality of locations, each data presentation unit operable to present at least one of the plurality of features according to attributes of the data presentation unit related to such presentation; and

- a server coupled to the data library, located remotely from each of the plurality of locations, and operable to

- select at least one of a desired number of features to present at a selected one of a desired plurality of times;

- determine restrictions applicable to the selected feature, the restrictions comprising restrictions indicative of data presentation unit attributes useful for the presentation of the selected feature;

- select applicable promotional data to be presented with the selected feature;

select one of the plurality of locations at which to present the selected feature based on a comparison of the restrictions applicable to the selected feature and the attributes of the data presentation unit at the selected location;

automatically provide the selected feature and promotional data from the data library to at least one of the plurality of data presentation units at the selected location at approximately the selected one of the desired plurality of times; and

control at least one facility element within the selected location at the selected one of the desired plurality of times.

The Examiner's Answer cites the following prior art references:¹

Yiu	US 6,008,777	Dec. 28, 1999 (filed Mar. 7, 1997)
Rabowsky	US 6,141,530	Oct. 31, 2000 (filed Jun. 15, 1998)
Srinivasan	US 2001/0023436 A1	Sep. 20, 2001 (filed Jan. 22, 1999)
Mercs	US 6,384,893 B1	May 7, 2002 (filed Dec. 11, 1998)

Amy Smith (Smith), "Naked City: Off the Desk," *The Austin Chronicle*, <http://www.austinchronicle.com/gyrobase/Issue/story?oid=oid:75143>, 1-3 (December 17, 1999).

Claims 1-4, 6-13, and 15-19, all of the appealed claims, stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Rabowsky in view of Mercs.

¹ The Yiu, Srinivasan, and Smith references are not part of the Examiner's stated grounds of rejection but, rather, are cited as evidence in support of the rejection.

Rather than reiterate the arguments of Appellant and the Examiner, reference is made to the Briefs and Answer for the respective details. Only those arguments actually made by Appellant have been considered in this decision. Arguments which Appellant could have made but chose not to make in the Briefs have not been considered and are deemed to be waived [see 37 C.F.R. § 41.37(c)(1)(vii)].

ISSUE

Under 35 U.S.C. § 103(a), with respect to appealed claims 1-4, 6-13, and 15-19, would one of ordinary skill in the art at the time of the invention have found it obvious to combine Rabowsky and Mercks to render the claimed invention unpatentable?

The pivotal issue before us is whether the Appellant has demonstrated that the Examiner erred in interpreting the authorization characteristic of a screen room location in Rabowsky as a screen room “attribute” which is compared to restrictions in a data presentation feature to determine locations in which to present the feature.

FINDINGS OF FACT

The relevant facts are:

1. Rabowsky discloses a motion picture delivery system having a Headend system 10 and a Theater system 60 and including a data library in the form of storage devices for storing motion picture cinema files. (Rabowsky, Figures 1 and 2, col. 2, ll. 25-47, col. 12, ll. 15-16 and 25-29).

2. Rabowsky also discloses (col. 11, ll. 54-60) multiple secure projector and screen room systems for presenting a plurality of cinema features in which screen display features such as size, aspect ratio, and screen reflectivity must conform to the projector output characteristics.

3. Rabowsky further discloses (Figures 1 and 2, col. 12, ll. 8-16) that Theater system 60 includes an automation/scheduling system 80 which controls the presentation of scheduled cinema features at scheduled times in scheduled screen room locations.

4. Rabowsky also discloses (col. 12, ll. 17-28) that the theater operator can modify the presentation schedule by changing play times and/or screen locations subject to notification and approval of a DMS (Distribution and Management System).

5. MerCs discloses an automated movie display control system in which a plurality of digital cinema processors (DCPs) function to control display facility elements such as lights and curtains. (MerCs, Figures 1 and 2, col. 5, ll. 20-45).

PRINCIPLES OF LAW

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. *See In re Fine*, 837 F.2d 1071, 1073 (Fed. Cir. 1988). In so doing, the Examiner must make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966). “[T]he examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a *prima facie* case of unpatentability.” *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). Furthermore,

there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness' . . . [H]owever, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.

KSR Int'l Co. v. Teleflex Inc., 127 S. Ct. 1727, 1741 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

ANALYSIS

The Rabowsky reference

With respect to the Examiner's obviousness rejection of independent claims 1, 8, and 15, Appellant's arguments in response assert a failure by the Examiner to establish a prima facie case of obviousness since all of the claimed limitations are not taught or suggested by the applied Rabowsky and Mercks references. Appellant's arguments focus on the alleged deficiency of Rabowsky in disclosing the claimed feature, present in each of the appealed independent claims 1, 8, and 15, of selecting locations to present selected data feature presentations based on a comparison of the restrictions applicable to the selected feature and the attributes of the data presentation unit at the selected location.

According to Appellant (App. Br. 7-9; Reply Br. 2-4), to whatever extent Rabowsky's disclosed projector and screen attributes such as size, aspect ratio, and screen reflectivity (col. 11, ll. 54-60) may be related to cinema feature presentation, any such attributes have nothing to do with the selection of a particular location for presentation of a selected feature. In Appellant's view, any restrictions that are considered by Rabowsky (col. 12,

ll. 8-28) in selecting projector locations in which to present a feature may include a predetermined playback schedule transmitted from the Headend 10 to the Theater 60, but any such restrictions are, at best, contractual restrictions which are not related to the attributes of the projector system.

We do not find Appellant's argument to be persuasive in convincing us of any error in the Examiner's stated position. We agree with the Examiner (Ans. 9-10) that the authorization characteristic of each screen room in Rabowsky can be reasonably interpreted as an "attribute" of the screen room. To whatever extent Appellant is relying upon specific projector system attributes such as the disclosed exemplary sound system and aspect ratio features, any such particular attributes are not set forth in the appealed claims. In our view, Appellant's arguments improperly attempt to narrow the scope of the claims by implicitly adding disclosed limitations which have no basis in the claim. *See In re Morris*, 127 F.3d 1048, 1054-55 (Fed. Cir. 1997).

We further agree with the Examiner (*id.*) that the disclosure at column 12, lines 8-28 of Rabowsky supports the conclusion that the feature playback schedule provided to the theater operator ensures that particular cinema features are presented only on authorized screen rooms by comparing the restrictions in the cinema file with the screen room authorization attribute. That the playback schedule in Rabowsky includes restrictions on which screen rooms are authorized to show which features is apparent since the modification of the schedule requires the notification and/or approval of the DMS (Distribution Management System). (Rabowsky, col. 12, ll. 18-25).

Appellant further contends (Reply Br. 4-6) that, even if it is assumed that the Examiner is correct in considering screen room authorization as an

“attribute,” Rabowsky still does not satisfy the requirements of the appealed claims which require a server which operates to select locations to display a feature based on a comparison of the feature restrictions and the attributes of the data representation unit at the selected location. We do not find Appellant’s arguments to be persuasive in showing any error in the Examiner’s position.

We note that Appellant correctly describes the operation of the system of Rabowsky as including the transmission of a playback schedule, which includes authorized playback times and screen locations, from the Headend 10 to the Theater 60. It is, however, the automation scheduling system 80, i.e., a server, within the theater system and located remote from the screen rooms that schedules the playbacks and provides the necessary controls to play the cinema features at the scheduled times. Further, as alluded to earlier in our discussion, since the change of a screen room location for a particular feature requires notification and/or approval, it is apparent to us that an ordinarily skilled artisan would recognize that a comparison of feature restrictions and screen room authorization is present in Rabowsky.

The Mercs reference

The Examiner has applied the teachings of Mercs to Rabowsky to address the claimed feature of controlling a facility element (e.g., lights, curtains, etc.) during a feature presentation. Appellant’s arguments (App. Br. 9, 12, and 14; Reply Br. 6, 8, and 10) attack the Examiner’s reliance on Mercs by focusing on the lack of any disclosure in Mercs of a comparison of feature restrictions to presentation unit attributes as presently claimed.

We find such contention to be unpersuasive since the Examiner has relied upon Rabowsky, not Mercks, for a teaching of the comparison of features restrictions with screen room authorization attributes. It is apparent from the Examiner's line of reasoning in the Answer that the basis for the obviousness rejection is the combination of Rabowsky and Mercks. One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. *In re Keller*, 642 F. 2d 413, 425 (CCPA 1981); *In re Merck & Co., Inc.*, 800 F. 2d 1091, 1096 (Fed. Cir. 1986).

CONCLUSION OF LAW

Based on the findings of facts and analysis above, we conclude that Appellant has not shown that the Examiner erred in rejecting independent claims 1, 8, and 15, nor dependent claims 2-4, 6, 7, 9-13, and 16-19 which are not separately argued, for obviousness under 35 U.S.C. § 103.

DECISION

The Examiner's 35 U.S.C. § 103(a) rejection of claims 1-4, 6-13, and 15-19, all of the appealed claims, is affirmed.

Appeal 2008-4837
Application 09/731,415

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

ELD

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